

7-3001-1438-2  
D-5496, R-4124

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION

BOARD

in the Matter of the Petition of  
the Chicago and North Western  
Transportation company for  
Authority to Retire and Remove  
24,775 Feet of ICC Trackage (Nos  
Unknown), Including 26 Turnouts,  
On and South of the Site of the  
Former Armour & Company Plant  
in South St. Paul, Minnesota

FINDINGS  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for hearing before  
Administrative Law  
Judge Richard C. Luis on April 28, 1987 at the Transportation Regulation  
Board's Offices in South St. Paul. The record in this matter closed on  
June 2, 1987.

Jeffrey R. Schmidt, Esq., Lindquist & Vennum, 4200 IDS Center, 80  
South  
Lighth Street, Minneapolis, Minnesota 55402, appeared on behalf of the  
Petitioner, Chicago and North Western Transportation Company (Applicant,  
Railroad) Elmer B. Trousdale, Esq., Oppenheimer, Wolff & Dannelly, W-  
1700  
First Bank Building, St. Paul, Minnesota 55101, appeared on behalf of  
Objectors Michael Kassan Realty, Fitzsimmons Company, R, Haz-Mat, Inc.,  
Spantran, Inc. and Lenmark Development Company. Ronald F. Mattson,  
Manager of  
Regulatory Affairs, Minnesota Department of Transportation, 810  
Transportation  
Building, St. Paul, Minnesota 55155, appeared on behalf of the staff of  
the  
Transportation Regulation Board. Board Chairman Laufenburger, and Members  
Keehr and Mayasich also attended and participated in the hearing,

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the  
Rules of Practice of the Public Utilities Commission, as applicable to the  
Transportation Regulation Board, and the Rules of the Office of  
Administrative  
Hearings, exceptions to this Report, if any, by any party adversely affected  
must be filed within 20 days of the mailing date hereof with the  
transportation Regulation Board, Minnesota Administrative Truck Center,  
254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul,  
Minnesota 55075. Exceptions must be specific and stated and numbered  
separately. Proposed Findings of Fact, Conclusions and Order should be  
included, and copies thereof shall be served upon all parties. If desired, a  
reply to exceptions may be filed and served within ten days after the service  
of the exceptions to which reply is made. Oral argument before a majority of  
the Board may be permitted to all parties adversely affected by the

Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the board as its final order.

#### STATEMENT OF ISSUE

Whether public convenience and necessity permit the Petitioner to retire and remove its tracks at and south of the old Armour plant site in South St. Paul.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. On January 14, 1987, the C&NW filed a Petition with the Board Requesting authority to retire and remove 24,775 feet of track on and south of the old Armour plant site in South St. Paul. On January 23, 1987, the Board published a Notice of Opportunity for hearing in its weekly calendar, and sent notice thereof to Petitioner's counsel, United Stockyards Corporation. Ronald F. Mattson, Van Hoven Company, Inc., Kassan Realty and the City of South St. Paul. On February 23, 1987, counsel for the Objectors intiled letter of objection on behalf of his clients to the Board, This hearing process followed.

2. The trackage in question runs in a general south to north direction (from a main switching point, or turnout, located several hundred feet southwest of the old Armour plant. At the turnout, the line splits into three main segments which run parallel to each other through the plant site. The easternmost segment (that closest to the Mississippi River, which runs in a north-south direction at that point) has several shorter spurs running off it, which spurs extend approximately half the length of the plant site, forming a small railyard next to the river levee. The main track segments join several hundred feet north of the plant site.

3. Just south of the north end of the old Armour plant site, the easternmost (riverside) segment described in the previous Finding bends to the west and joins the central segment. The central and western segments, which are parallel to each other and approximately 200 feet apart as they run out of the north side of the Armour site, join each other several hundred feet north of the old plant. The track segments lying between the turnout (from which the three track segments branch and lead into the plant) south of the plant site, running north to the northern end of the plant site, form the subject matter of this Petition. The trackage between the northern border of the plant and the point where the segments converge again several hundred feet north of the plant is not within the scope of this Petition.

4. On May 27, 1987, the Railroad filed a Petition with the Board for authority to retire and remove the tracks between the northern border of the

Armour- plant (United Avenue) and the northern junction described in the previous Finding. See Letter of Objectors' Course I to the, Acimi n i str at i ve Law Judge, filed June 2, 1987, That Petition is not involved in this proceeding.

5, If this Petition is granted, railway access to the old Armour plant site from the south will be removed, If the Petition of @'iay 2-; , 19o@7 is granted, railway access to the site from the north will be removed.

c The 47-acre Armour plant site is unique. (ying directly east of the stockyards at South St, Paul, the plant served for seven& decades as a giant meat packing and shipping facility, A huge building complex Was erected on the site, which facilities still stand. The old plant consists of One Industrial building and several smaller ones, which served as warehouse, loading dock L-P; ;-' ;dminisv:stive offices supplementary to the Slaughterhouse and rendering operations, The total work floor space on the site is over two million square feet. The buildings are constructed of steel-reinforced brick and are so solidly built that they cannot be knocked down with a wrecking ball, This meat packing facility was finally closed by Armour- @r) 1979, Cjctor Kassan Realty bought the site in June, 1980 and has re-named it "Armour Place".

7@ The Armour Place site has excellent road access (-,@ (.Mississippi River) access.

8. United Stockyards, Inc. owns the land through which the three main branches pass from the southern turnout to the southern, end of plant site. United desires to sell this land, which is presently vacant, for future development (probably as a truck terminal), United would be able to undertake such a transaction if this Petition is granted and the Railroad then sells its right-of-way to United. The Railroad will not be able to sell the right-of-way if this Petition is not granted. United "pports a granting of the Petition.

9. The Van Hoven Company, a recycler of animal by-products, operates a plant near the Mississippi River south of the Armour site. Van Hoven supports a granting of the Petition because a removal of the tracks will grant it

unfettered access (along a private road running north of the southern turnout creating the three main branches of track) to Hardman Avenue, the north-south thoroughfare running in front of the old Armour plant. If the Petition is not granted, Van Hoven's access road to Hardman would continue to cross the three tracks.

10. The Fitzsimmons Company has for many years been engaged in the material handling business, with its principal business involving the removal and salvaging of damaged rail freight previously involved in derailments or any other event which caused damage to freight cars and siding. Fitzsimmons has been engaged in Recovering such bulk commodities as coal, grain, steel and 7aTbL, 1 @ sok- Kandles significant volumes of such recovered freight. For this purpose, it requires access to loading dock and railroad track facilities. The number of facilities available in the upper Midwest area is shrinking, and the Armour plant facility is one of the last eligible locations available to Fitzsimmons. The Armour facility is attractive to Fitzsimmons because it is a secured facility and because of its excellent loading docks. This Objector has entered into a lease agreement with Lenmark Development and Kassan Realty Company to utilize the rail facilities in the

@,,@mour plant for its operations. The South St. Paul area is more attractive to Fitzsimmons as a site for its operations than its current facilities at Montrose in Wright County, where Fitzsimmons is several blocks from a rail line and has no loading dock. If the Petition is denied and the trackage is upgraded, and Fitzsimmons moves to the South St. Paul location, it will utilize the trackage to the extent of shipping 10 to 20 railway carloads per month .

11. R. Haz-Mat, Inc. is engaged in the recycling of hazardous materials and plans to establish an environmental recycling processing facility at the Armour plant site for, among other things, the recycling of plastics and crankcase oil. Such processing includes the shipment Inbound by rail of plastic material for reprocessing and involves shipping out-bound by rail of the ground, shredded or reprocessed plastic. Such movement also involves in-bound used crankcase oil and the movement out-bound of reprocessed motor oil. Railway access is essential to this Objector's proposed operations,

P, Haz-Mat plans to deploy 21 techniques and methodologies for recycling various materials at the Armour site. It would utilize different portions of the old facility for its various operations. The efficient operation of these planned facilities depends, in part, on the continued maintenance of rail trackage into and adjacent to the plant site. In addition to the materials mentioned above, the recycling operations would involve: the recovery of silver from x-ray and photographic fixer solutions; recovery of copper from printed circuit etchants; rubber tire recycling; recovery of industrial solvents; biological degradation of organic waste compounds; biological augmentation of waste effluents with bacteria; neutralization and detoxification of industrial hazardous and toxic wastes; recovery of semi-precious metals from printed circuit boards; recycling of aluminum from beverage containers and vehicle transmissions; the recycling of glass from "returnable" beverage bottles; and the recovery of mercury from industrial instrumentation. See Letter to Board from Objectors' Counsel dated February 23 , 1987 and Proceedings ' Exhibits 18 .

12. R. Haz-Mat's planned utilization of the Armour plant site has been presented to the South St. Paul City Planning Board by its consultant, Melvin Davis of Chemical Consultant Formulators, Inc. Mr. Davis foresees the recycling operations as being completely self-contained on the Armour site, with no waste disposal contemplated at that location. If the recycling facility is fully developed, it will employ approximately 1500 people and operate 24 hours per day. The facility will utilize the Railroad trackage to the extent of approximately ten carloads per day.

13. Both Fitzsimmons and R, Haz-Mat oppose the granting of this Petition. The Petition is also opposed by Michael Kassan, the South St. Paul realtor who owns the Armour plant site. Mr. Kassan plans to pay for an upgrading of the tracks in question (see subsequent Findings) and, thereafter, to sell the site to Lenmark Development Company, which will convert the old plant facility into the recycling center envisioned by R, Haz-Mat.

14. Not all of the 24,775 feet of track involved in this Petition is still in place. Substantial amounts of trackage have been removed from the area within the "Armour Place" site (see Applicant's Exhibit 2).



15. It would cost the Railroad \$17,543 to upgrade each existing turnout involved in this Petition to the level of "Class One" track (100-pound rail, ten mile per hour speed limit). See Applicant's Exhibit 13 and Bench Exhibit 17.

16. The cost to the Railroad to construct each 100 feet of track meeting the "Class One" standard is \$7,234. None of the existing trackage in the area covered by the Petition is up to that standard SE-e Applicant's Exhibit 14

17. The cost of constructing each new turnout, at location where all trackage has been removed, is \$31,574. See Applicant's Exhibit 15.

18. The annual maintenance cost, including inspection, engineering and supplies for the track involved in this Petition is (historically, for recent years in which maintenance was done) between \$8,000 and \$8,500. The Railroad incurred no maintenance costs on these tracks in 1986. If new trackage meeting "Class One" standards is installed, maintenance costs should be minimal in the years immediately following installation. See Applicant's Exhibit 16.

Based upon the above findings of fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The subject matter of the Petition is within the jurisdiction of the Minnesota Transportation Regulation Board and the matter is properly before the Administrative Law Judge pursuant to adequate notice. All procedural requirements of law or rule have been fulfilled.

2. Public convenience and necessity would be adversely affected by the retirement and removal of the 24,775 feet of track or and immediately south of the "Amour Place" in South St. Paul.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing Conclusions, it is the recommendation of the Administrative Law Judge to the Board that it issue the following

#### ORDER

IT IS HEREBY ORDERED that the Petition of the Chicago and North Western Transportation Company for authority to retire and remove 24,775 feet of ICC trackage, including 26 turnouts, located on and south of the former Armour Comp&nl plant in South St. Paul, Minnesota be and nereby is DENIED.

Dated this /'-- day of July, 1987,

RICHARD C. LUIS  
Administrative Law Judge

#### NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, No Transcript.

#### MEMORANDUM

While it is true that the C&NW's tracks have had no traffic since Armour shut down operations at its plant in 1979, and the tracks have therefore yielded no revenues and have drained the Railroad's resources since then, the record shows that it would be imprudent to remove the tracks at this time.

The record establishes that Mr. Kassan and the other Objectors are willing to stand the cost of upgrading the tracks. If that is done, and the rest of the obstacles are cleared to allow development of the recycling operations, the presently-abandoned site could again become viable. The Objectors, who have a vision for development that could rejuvenate this huge, unique facility, should be allowed the opportunity to proceed, especially since they are willing to pay for upgrading of the tracks.

The Railroad would "lose" a potential \$36,000 (the price United Stockyards is willing to pay for the three track segments in the area south of Armour Place) if it is not allowed to retire and remove the trackage involved in this Petition. That loss seems small when compared against the potential loss of a multi-million dollar development that depends on the continued provision of rail access.

Minn. Stat. 219.681 and 219.741 grant to the Board the power to authorize retirement and removal of railroad trackage, but do not spell out a standard for making such a decision. The Objectors argue that the standard should be that established in the predecessor statute, which was repealed in 1945, which provided that tracks could not be abandoned or closed for traffic unless the facts established that the proposed action would not result in substantial injury to the public". The Administrative Law Judge cannot agree.

As argued in the Petitioners' brief, the 1945 legislation repealed the

predecessor statute of Minn. Stat. 219.681 and 219.741 and passed legislation that superseded the old act. See *State v. Chicago Great Western Ry Co.*, 25 N.W.2d 294 (1946). A balancing test, best defined as a consideration of whether the "public convenience and necessity" will permit abandonment of the trackage, is a standard that has been utilized by the Board in past decisions and should continue as a basis for analysis in this case.

In determining what considerations weigh on deciding the public convenience and necessity, the application of a "balancing test" measuring factors such as the financial burden to the Railroad, the future use of the track by shippers (with resulting revenues to the Railroad), the general geographic situation relating to the line of track age and other adequate, available means of transportation and access to the shippers' markets is appropriate. See *Minneapolis and St. Paul Suburban Railroad Company v.*

village of Birchwood, 244 N.W. 57, 58 (1932) and Cartersville Elevator

I CC, 724 F.2d 668 , 670-7 1 ( 8th Ci r 1 984 ) The administrative Law Judge has attempted to apply such a test in arriving at his Recommendation,

The potential "loss" to the Railroad in not being able to sell its right-of-way to United is balanced, over the long run, by the potential revenues from the steady flow of rail traffic into the site generated by Fitzsimmons and the recycling center. In addition, the Objectors are waiting to defray all present rail upgrading costs in connection with their development. The development of the plant site depends on the Railroad tracks' staying where they are. Mr . Davi s ' s testimony on behalf of the developers to the effect that the proposed recycling center will not be able to operate without rail access is credible and unrebutted Although the proposed development may no; work out for a variety of reasons unrelated to the Board's decision and outside the scope of its jua sdiction (a great variet of environmental permits from several agencies at different levels of government would be required, for instance), it is evident that a granting of the Petition at this time will immediately block a promising venture that could rejuve ste the local economy and benefit the Railroad as well. if the future shows tne re is no further need for rail service, the Railroad can Petition again Such drastic action as retirement and removal of the tracks should not be taken until the future development potential of the Armour Place state comes into clearer focus

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